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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the third periodic report of Kenya*

The Committee against Torture, at its thirty-eighth session (A/62/44, paras. 23 and 24), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (see CAT/C/KEN/CO/2, para. 6)[1] on the need for a comprehensive definition of torture and punishments commensurate with the gravity of the offence, please indicate when the Prevention of Torture Bill (2014) will be tabled for adoption by Parliament. What measures will the State party take to ensure its prompt consideration, adoption and implementation?

2. With reference to the previous concluding observations (para. 8), in which the Committee expressed concern that the Children Act of 2001 only punishes torture or ill-treatment of children with imprisonment not exceeding 12 months or a fine or both, please provide information on the measures taken to ensure that national legislation provides appropriate penalties for torture or ill-treatment of children.

3. With reference to the previous concluding observations (para. 7), in which the Committee expressed concern that State officials accused of violations of the Convention were not being charged with the offence of torture, please indicate whether any law enforcement, intelligence, prison or military personnel have been prosecuted for the crime of torture. If so, please provide details on the relevant cases and their outcomes.

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

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4. With reference to the previous concluding observations (para. 9), in which the Committee expressed continued concern about persistent allegations of extrajudicial killings, enforced disappearances and excessive use of force by officials, and in the light of the State party's follow-up report, in which it indicated that it was collecting and would submit data on the results of all investigations into such incidents,[2] please provide that data, indicating the number of prosecutions undertaken during the reporting period concerning extrajudicial killings, enforced disappearances and excessive use of force allegedly committed by police, intelligence, prison, military or other security personnel, such as municipal guards (City *askaris*); the charges levied against the accused in each case; the number of cases in which prosecutions resulted in convictions; and the punishments in each case.

Article 2[3]

5. With reference to the previous concluding observations (para. 10), in which the Committee expressed concern that safeguards against torture and ill-treatment are afforded in law to persons in custody but are not fully upheld in practice,[4] please provide information on the measures taken during the reporting period to ensure that all persons deprived of their liberty can enjoy, in practice, fundamental legal safeguards from the moment of arrest, particularly the rights to have access to a lawyer,[5] to notify a relative, to be examined by an independent doctor and to be presented to a judicial authority promptly, as provided for in article 49 of the Constitution,[6] and, particularly, information on:

(a) Measures to ensure that the Persons Deprived of Liberty Bill is enacted into law, considering the State party's follow-up report to the Committee stating this was expected to occur in August 2014;[7]

(b) Measures taken to monitor compliance of police and other security officials with these legal safeguards, including data on any disciplinary or other action against police officers for refusing to provide prompt access to a lawyer, independent doctor or notification of a relative;

(c) The number of individuals detained during the reporting period pursuant to the Prevention of Terrorism Act of 2012, as amended by the Security Laws Amendment Act of 2014, and, in each case, the length of time that has elapsed since the deprivation of liberty and a court hearing. How will the State party ensure that persons detained pursuant to that law are afforded fundamental legal safeguards against torture?

(d) Information on the progress of any investigations undertaken into reports of denial by the authorities of fundamental legal safeguards of persons deprived of their

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[2] See CAT/C/KEN/CO/2/Add.1, para. 9.

[3] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[4] See CAT/C/KEN/CO/2/Add.1.

[5] See CCPR/C/KEN/CO/3, para. 19.

[6] Ibid., para. 18.

[7] See CAT/C/KEN/CO/2/Add.1, para. 11.

liberty, including in the context of the April 2014 Usalama Watch operation in Nairobi, in which an estimated 5,000 people were detained.

6. With reference to the previous concluding observations (para. 25), in which the Committee expressed concern about difficulties faced in gaining access to justice, please provide updated information on the progress achieved in the passing of the Legal Aid Bill (2012), and the implementation of the National Legal Aid Programme, including data on the funding and the extent of legal aid services provided during the reporting period, so that a lack of resources is not an obstacle to citizens' access to justice.

7. Please indicate the status of consideration of ratification of the Optional Protocol to the Convention against Torture.[8]

8. Please provide information on the measures taken to prevent human trafficking for purposes of sexual and labour exploitation, including of women and girls and people with albinism.[9] Please include disaggregated data on the number of complaints, investigations, prosecutions and sentences for acts of trafficking and information on the measures taken to increase the protection of victims of trafficking and to provide redress and rehabilitation, including adequate shelters and assistance in reporting trafficking incidents to the police.

9. Please provide information on the measures taken during the reporting period to prevent and eliminate violence against women and girls, including sexual violence, including:

(a) Information on efforts to prevent and punish sexual violence by members of the police and security forces, including data on complaints received, investigations, prosecutions and any punishment;

(b) Statistical data on the number of all other complaints received relating to violence against women and girls and on the number of convictions and the penalties imposed on the perpetrators;

(c) Measures taken to ensure that all reports of domestic violence, including sexual violence and violence against children, are registered by the police and that all such violent incidents are promptly, impartially and effectively investigated;

(d) Measures to ensure protection for victims of domestic and sexual violence, including access to medical and legal services, psychosocial counselling and effective access to redress;

(e) Any legislation the State party is considering adopting that would establish marital rape as a distinct criminal offence.[10]

10. Regarding the Committee's previous concluding observations (para. 26), please provide information on:

(a) Data concerning the implementation and enforcement of the Prohibition of Female Genital Mutilation Act (2011),[11] including the number of complaints, investigations, prosecutions and convictions, and on the sentences imposed on perpetrators of criminal acts related to such practices;

(b) Information about any medical and psychosocial assistance and redress provided to victims;

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[8] See CCPR/C/KEN/CO/3, para. 17.
[9] Ibid.
[10] See CEDAW/C/KEN/CO/7, para. 21.
[11] See A/HRC/29/10, para. 142.52.

(c) Any awareness-raising campaigns against female genital mutilation conducted among the general public and medical practitioners and personnel.[12]

11. With reference to the previous concluding observations (paras. 27 and 28), in which the Committee expressed concern about the practice of detaining women after they have given birth because they are unable to pay their medical bills, occurrences of forced and coerced sterilization of HIV-positive women and women with disabilities and the uncertainty of women and doctors concerning the legality of abortion in cases of rape or incest, please provide information on:

(a) Measures taken to ensure that women seeking maternity services are not detained or subjected to ill-treatment at public or private hospitals, including for non-payment of fees, and to ensure the implementation of the Presidential Directive on free maternity services;

(b) Any investigations undertaken into allegations of involuntary sterilizations or other harmful practices in connection with reproductive health, and any resulting prosecutions or administrative proceedings, to identify and punish those involved in such practices;

(c) Measures taken by the State party to ensure effective monitoring of health facilities, including to establish effective complaints mechanisms accessible to women who allege ill-treatment;

(d) Measures taken to affirm that women who have been subjected to rape or incest are able to have access to abortions,[13] and to ensure that post-abortion care services are accessible, affordable and of adequate quality.

12. With reference to the Committee's previous concluding observations (para. 30), please provide information on the measures to establish child protection units in police stations and helpline call centres throughout the country, to strengthen the inspection and monitoring of charitable institutions for children and to publicize the reports concerning the monitoring of children's institutions by the National Gender and Equality Commission and implement the recommendations therein.

13. With reference to the previous concluding observations (para. 17), in which the Committee expressed concern about allegations that lynchings, particularly of elderly women accused of witchcraft, had not been effectively investigated, and that the perpetrators had not been prosecuted or punished, please provide information on the number of investigations and prosecutions related to such attacks during the reporting period and indicate the status of the consultations regarding the revision of the law prohibiting the practice of witchcraft.[14]

Article 3

14. With reference to the previous concluding observations (para. 20), in which the Committee expressed concern about cases of deportations effected without due process, please provide information on any legislative reforms undertaken to ensure that the State party does not expel, return or extradite foreigners to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. Please indicate the measures taken to ensure that the State party complies with its non-refoulement obligations under article 3 of the Convention, particularly concerning populations in

[12] See CEDAW/C/KEN/CO/7, para. 20 (c).
[13] See A/HRC/29/10, para. 143.60.
[14] See CAT/C/KEN/CO/2/Add.1, para. 13.

Nairobi and the Dadaab and Kakuma refugee camps. Please provide information on the measures taken to ensure that all asylum applicants are afforded due process.

15. Please provide statistical data since the consideration of the State party's previous report, disaggregated by sex, age and country of origin, on:

(a) The number of registered asylum requests by adults and minors registered by the State and the number of such requests that have been granted;

(b) The number of persons who have been returned, deported or extradited, the grounds for such action and the countries to which such persons were returned.

Articles 5-8

16. Please provide information on whether the State party has rejected requests for extradition by another State of an individual suspected of having committed torture, and has therefore started prosecution proceedings. If so, please provide information on the status and outcome of such proceedings.

Article 10

17. With reference to the Committee's previous concluding observations (para. 24), please clarify whether the police receives specific training on the provisions of the Convention and on how the effectiveness of the training is evaluated. Please indicate whether all law enforcement and military personnel receive human rights training and whether all relevant medical and law enforcement personnel are trained on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Article 11

18. With reference to the previous concluding observations (para. 14), in which the Committee expressed concern about the need for the State party to enable the Kenya National Commission on Human Rights to carry out its mandate in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), please provide information on:

(a) Monitoring visits to places of detention by the Kenya National Commission on Human Rights during the reporting period, reports of the Commission on such visits, including conclusions and recommendations made, and whether the reports are made public;

(b) Measures to increase the resources of the Commission[15] to enable it to carry out all its mandated activities, including monitoring places of detention;

(c) Measures to ensure that State agencies implement the recommendations of the Commission and any investigations or policy changes undertaken in response to the recommendations of the Commission.

19. Please provide data on monitoring visits made to places of detention by the Independent Police Oversight Authority during the reporting period, and information about its conclusions and recommendations, whether these have been implemented and with what results.

[15] See A/HRC/29/10, para. 142.11.

20. With reference to the Committee's previous concluding observations on conditions of detention, including pretrial detention (paras. 12, 13 and 15), please provide information on:

(a) Any investigations and prosecutions of officers of penal institutions for acts of torture or ill-treatment, including sexual violence and sexual exploitation of detainees;

(b) Measures taken to address inter-prisoner violence in places of detention, including sexual violence or sexual exploitation of detainees, and any investigations into such allegations or any related prosecutions;

(c) Measures to reduce the length of pretrial detention and the high number of detainees awaiting trial;

(d) Measures taken to reduce overcrowding in prisons and detention centres; including data on the frequency of use of non-custodial measures and community service orders, particularly for minor offences;

(e) Measures taken to improve conditions in all places of detention and ensure that adequate health services are made available;

(f) The number of cases in which the State party has imprisoned children under 4 years of age with their mothers, and whether the State party has considered alternatives to such incarceration, and with what results;

(g) Information on the measures taken to protect detainees from contracting HIV.

Articles 12 and 13

21. With reference to the previous concluding observations (para. 9), in which the Committee expressed concern about the low rate of investigations of allegations of extrajudicial killings, enforced disappearances and excessive use of force, please provide information on the measures taken to ensure effective, impartial investigations into allegations that members of the security forces, including the Anti-Terrorism Police Unit, have engaged in extrajudicial executions acting on orders from superiors, including those alleged in a December 2014 documentary that purported to feature testimony of unnamed officials admitting to this conduct.

22. With reference to the Committee's previous concluding observations (para. 18), and considering the information received from the State party in follow-up to the concluding observations, please provide information on:

(a) Measures that the State party has taken to ensure the prompt, impartial and effective investigation of all allegations of torture — particularly sexual violence—, excessive use of force and extrajudicial killings perpetrated by the police and the military during the 2007 and 2008 post-election violence,[16] and to prosecute the perpetrators of such acts;

(b) Any redress that has been provided to victims of torture and sexual violence perpetrated during the post-election violence,[17] and whether the fund for restorative justice established by the President in 2015 been used to provide redress for these victims;

(c) Whether the report of the multi-agency task force on the post-election violence has been published, and actions taken in response to its findings;

[16] Ibid., para. 142.100.

[17] See CAT/C/KEN/CO/2/Add.1, para. 16.

(d) Whether the General Assembly[18] has considered the report by the Truth, Justice and Reconciliation Commission, and the measures taken in response to that report;

(e) Measures taken by the State party to cooperate with the investigations by the Prosecutor of the International Criminal Court into the post-election violence.

23. With reference to the previous concluding observations (para. 22), in which the Committee expressed concern about the persistent failure of the State party to promptly, impartially and effectively investigate all allegations of acts of torture and ill-treatment, and in the light of reports that the practice of torture and ill-treatment by law enforcement officials remains widespread, please provide information on the measures taken to ensure that allegations of torture or ill-treatment by police officials and officials of other security agencies are promptly, effectively and impartially investigated and prosecuted and that perpetrators of such acts, if convicted, are punished appropriately. In particular, please provide information on:

(a) Whether, as mentioned in the State party's report on follow-up to the concluding observations, draft regulations prepared by the Independent Policing Oversight Authority[19] provide for disciplinary and criminal punishments for police officers who fail to report deaths or serious injuries resulting from police action or occurring in police custody or who fail to properly secure evidence in such cases, the number of cases in which these regulations been applied and the disciplinary and criminal punishments that have resulted;

(b) Whether any recommendations concerning the necessary changes to police processes or procedures have been made by the Authority during the reporting period and whether they have been implemented;

(c) The number of cases of the use of force leading to death, serious injury or other grave consequences that the authorities have reported to the Authority during the reporting period,[20] the number of such cases that the Authority has referred to the Director of Public Prosecutions and the number of prosecutions and convictions that have resulted;

(d) Measures taken to ensure that the National Police Service Commission suspends alleged perpetrators of torture or ill-treatment from duty pending investigation, with reference to the Committee's previous concluding observations (para. 11).

24. With reference to the Committee's previous concluding observations (para. 22), please provide information on the measures to ensure that all victims of torture and ill-treatment have effective access to complaints mechanisms. Please provide data on whether the draft Independent Police Oversight Authority regulations creating a more simplified process for recording complaints against the police have been implemented.[21] Please provide data on the number of complaints filed with the Authority, disaggregated by year. How many cases has the Authority recommended for prosecution to the Director of Public Prosecutions? How many prosecutions have actually been initiated, did any result in convictions and, if so, on what charges and with what sentences?

25. With reference to the Committee's previous concluding observations (para. 11), please provide information on the measures taken to ensure that the Independent Police Oversight Authority is independent and has sufficient financial and human resources to carry out its mandate.

[18] Ibid., para. 19.
[19] Ibid., paras. 2 and 3.
[20] Ibid.
[21] Ibid.

26. With reference to the Committee's previous concluding observations (para. 22), please provide information on the measures taken by the State party during the reporting period to ensure that the State party's requirement that victims of violent attacks obtain a "P3 form", to be completed by a doctor to initiate a criminal investigation into the attack, and that victims of sexual violence obtain a post-rape care form for medical documentation of sexual offences, does not effectively deprive victims of violations of the Convention of access to an effective complaints mechanism. Please indicate whether measures have been taken to ensure that police and medical professionals do not demand payment from victims of violence, including sexual violence, for providing, completing, processing or testifying in court in relation to these forms, and to ensure that any individual who demands payment for such actions is investigated and subjected to disciplinary or other punishment. Has the State party established an independent medical examiners service to address these issues?

27. With reference to the Committee's previous concluding observations (para. 22), please describe any measures taken during the reporting period to ensure that victims alleging abuse in places of detention can make confidential complaints of torture or ill-treatment to an independent and impartial institution and any specific measures taken in order to provide effective follow-up to such complaints.

28. With reference to the previous concluding observations (para. 16), in which the Committee expressed concern about the practice of arbitrary detention by the police for the purpose of extortion of the detained person, please provide information on any investigations undertaken into allegations of such conduct during the reporting period. Have any prosecutions and convictions resulted?

29. With reference to the Committee's previous concluding observations (para. 21), please provide information on the measures taken to ensure that the provisions of the Witness Protection Act are upheld in practice in order to protect witnesses and their families, making them less vulnerable to threats and reprisals by law enforcement personnel who may seek to eliminate evidence that could be used against them. Do the resources allocated to the Witness Protection Agency enable it to function effectively in practice? How many individuals have benefited from witness protection provided by the State during the reporting period? How are complainants protected in practice against any intimidation or reprisals as a consequence of their complaints? Please provide information on complaints of reprisals received by the Independent Police Oversight Authority and the Internal Affairs Unit of the Police, investigations undertaken by these bodies and the number of such cases that have been recommended for trial, and data on prosecutions and convictions that have occurred.

Article 14

30. With reference to the Committee's previous concluding observations (para. 23), please provide information on:

(a) All awards of compensation or other redress made by the courts to victims of acts amounting to torture or ill-treatment during the reporting period;

(b) The total amount of outstanding compensation awards that have not been satisfied by the State and how the State party will ensure that all those who have received judicial orders for compensation for torture or ill-treatment actually obtain compensation;

(c) The status of the Victims of Offences Bill and efforts to establish a comprehensive legislative framework to give effect to the right to redress, including compensation and medical rehabilitation to victims of torture and ill-treatment;

(d) Any measures taken to reduce delays in civil compensation cases;

(e) Any consultations with relevant stakeholders to regulate the National Fund for Victims of Torture;

(f) Measures to ensure that the right to rehabilitation is included in the Prevention of Torture Bill (2014) and that adequate resources are allocated for effective rehabilitation treatment and programmes, including medical and psychological programmes and those provided by non-State services;

(g) Whether health-care and rehabilitation services for victims of torture are covered by the National Hospital Insurance Fund;

(h) Whether the State has conducted an assessment to identify victims of torture and ill-treatment and their rehabilitation needs; whether a rehabilitation programme specifically supporting torture victims exists and, if so, who performs the services; the amount of funds provided by the State; how many psychologists/psychiatrists are in the country and how many have the necessary skills to work with severe trauma; and whether there is an independent mechanism to monitor and evaluate the State's delivery of rehabilitation.

Article 15

31. Please provide data on the number of cases during the reporting period in which the courts rendered confessions inadmissible as a results of these complaints, and the number of criminal and disciplinary proceedings initiated against the alleged offenders as a result.

Article 16

32. With reference to the Committee's previous concluding observations (para. 32), please provide information on the measures taken to prevent and punish harassment, intimidation and violence directed against human rights defenders and journalists, including the cases of the deaths of Hassan Ali Guyo in August 2013 and newspaper editor and publisher John Kituyi in April 2015, and allegations that human rights organizations, including Muslims for Human Rights and HAKI Africa, have been subjected to retaliation by the authorities for their documentation of abuses in the context of counter-terrorism.

33. Please provide information on the measures taken to address the reported discrimination and ill-treatment, including acts of sexual violence, of lesbian, gay, bisexual and transgender persons. Please indicate whether the State party has repealed any legal provisions that foresee penalties against such persons.

34. With reference to the Committee's previous concluding observations (para. 31), please provide information on the measures taken to establish effective safeguards in psychiatric hospitals to prevent ill-treatment of persons and to improve the material conditions in psychiatric hospitals, including with regard to hygiene and overcrowding, and measures to ensure that psychiatric hospitals are adequately monitored by public authorities and the Kenyan National Commission of Human Rights, including detailed information on the place, time and periodicity of visits, including unannounced visits, to psychiatric institutions and other places of deprivation of liberty where persons with disability are being held, and on the findings, outcome and follow-up to such visits.

Other issues

35. Please describe if and how any anti-terrorism measures by the State party have affected human rights safeguards in law and practice and how the State party has ensured that such measures comply with all its obligations under the Convention.

36. Please clarify whether the State party has extended an invitation to visit to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment, pursuant to the commitment by the State party's representatives during the 2013 dialogue with the Committee, as cited in the Committee's previous concluding observations (para. 5).

General information on other measures and developments relating to the implementation of the Convention in the State party

37. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.